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News

N.J. seized this man's gun because he glorified violence against Jews, cops say

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By Joe Atmonavage | NJ Advance Media for NJ.com

Police had been watching David Greco for months, carefully monitoring his online activity.

They noted that he often "threatened, advocated and celebrated the killing of Jewish people."

He also was in communication with the man accused of walking into a Pittsburgh synagogue last year and killing 11 people, they alleged. (Greco has denied this.)

On Aug. 5, after months of observation, law enforcement officers paid a visit to Greco's Camden County home.

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The law deprives Greco, and other gun owners in New Jersey, of their due process rights, as they are not given a chance to be heard in court before a temporary order is issued and police take firearms, says Albert J. Rescinio, Greco's attorney. And can a gun owner have their "constitutional rights abrogated" for things said "that the government or anyone else might not like?" the attorney asked.

"Why can't you give people the opportunity to know what is going on? To give them the opportunity to be heard?" Rescinio said. "You are being deprived of your constitutional rights without a hearing, without being given the opportunity to know what is going on."

The lawsuit asks the court to issue a preliminary injunction throughout the state stopping the implementation of the law as it currently written.

The lawsuit was filed against Attorney General Gurbir Grewal, New Jersey's Office of Homeland Security and Preparedness and numerous local law enforcement agencies. Grewal's office declined to comment. The Office of Homeland Security and Preparedness did not respond to multiple requests seeking comment.

Scott Bach, executive director of the Association of New Jersey Rifle & Pistol Clubs, said his organization is planning to challenge the constitutionality of the law as well.

"The system is rigged against the honest gun owner," he said.

How the law works

The Extreme Risk Protective Order Act of 2018 is one of several gun control measures Gov. Phil Murphy has signed into law during his tenure.

In response to a spate of mass shootings, similar extreme risk protection order laws, often referred to as "red flag" laws, have been passed in 16 other states.

In New Jersey, the law allows a law enforcement officer, family or household member to submit a petition to state Superior Court showing why a judge should issue an order to keep guns away from someone who potentially poses a danger of causing bodily injury to themselves or to others.

If the judge determines there is "good cause" to remove the guns, he will initially issue a temporary extreme risk protection order and a search warrant is executed to recover the guns from the person.

The individual is entitled to a hearing within 10 days in front of the judge before a final order is issued

A final order lasts indefinitely, but the person can also seek to have the order terminated at any time after the order goes into effect. A person has 45 days to file an appeal once an order is granted.

State Assembly Majority Leader Lou Greenwald, D-Camden — a main sponsor of the law — previously told NJ Advance Media the law is “really based around a mental health concern.”

“(Families) can now ask a judge to intercede and remove the gun until that individual can be tested and be determined to be safe to themselves and others,” Greenwald said.

A recent case study of California’s extreme risk law found at least 21 cases in which extreme risk protection orders were used to disarm people who threatened mass shootings, according to Giffords Law Center, a gun control policy organization. Earlier this month, a cache of weapons were seized from the suspected leader of a neo-Nazi group who was believed to be preparing for a “race war” in Washington state, according to NBC News.

“The research shows these laws are working,” said Allison Anderman, managing attorney of Giffords Law Center.

The Greco case

Five days after the Extreme Risk Protective Order Act went into effect, a petition was filed against Greco by an anonymous person within New Jersey’s Office of Homeland Security and Preparedness.

The petitioner explained that through FBI contacts, they determined that Greco was “involved in online anti-Semitism.” Before the shooting that killed 11 inside a Pittsburgh synagogue in October 2018, Greco had communicated with the accused shooter, according to the petition. Greco denied this claim and “denounced” what the shooter did, he said in a statement.

“I never at any time had any contact or communication whatsoever with the 2018 Pittsburgh Temple shooter, and I specifically stated that I thought what he had done was clearly wrong, disgraceful and horrible,” Greco said.

After mass shootings this summer in El Paso and Ohio, “precautions” were taken by federal and local law enforcement agencies and they interviewed Greco about his posts on Gab.com, a popular online social forum for far-right groups, according to the petition, which was dedicated to anti-Semitism and white supremacy.

At first, Greco, 51, refused to answer the door. He only spoke with officers after his parents came home and allowed them in the modest home.

As police questioned him about comments he made on a far-right social media platform, Greco was “extremely agitated and angry,” authorities said, but he did not talk about acting out on his disdain for Jewish people. However, they also noted that he said he “believes that Jews are raping our woman and children” and that “force or violence is necessary to realign society.”

On Sept. 6, police once again visited Greco’s home, descending without warning, to seize his gun and ammunition.

Unknown to Greco, a Camden County Superior Court Judge Edward McBride had issued a temporary extreme risk protection order earlier that day based on an affidavit regarding Greco’s behavior. The order allowed police to execute a no-knock search warrant of his home and seize one semi-automatic rifle, ammunition and his firearms purchaser ID card.

Under a law that went into effect Sept. 1, called the Extreme Risk Protective Order Act, a law enforcement officer, family or household member can now petition a state Superior Court judge to take away the guns of a person who they believe “poses an immediate and present danger” to themselves or others. Even if they have not committed a crime.

Two months after going into effect, the constitutionality of the law is being challenged in a proposed class action lawsuit that was filed in New Jersey federal court last month. Greco’s case is at the forefront of the suit. It is the latest lawsuit challenging strict gun control measures Gov. Phil Murphy has signed into law over the last year.

The lawsuit challenges whether there is legal authority to execute a search warrant after a temporary extreme risk protection order is issued.

From their interview with Greco, law enforcement said he was extremely intelligent, but noted he held anti-Semitic views.

"His behavior was methodical and focused on facts, specifically from Nazi Germany," the petition says about the interview. "Greco believes that force or violence is necessary to realign society."

"He believes that Jews are raping our woman and children," the petition says.

The day after the petition was filed, Judge McBride found "good cause" that Greco presented an immediate danger to himself or others. The order said even after being visited by law enforcement in August, Greco continued his "glorification of extreme violence against Jewish people" and has a "history of threats or acts of violence" towards himself and others.

Judge McBride issued a temporary extreme risk protection order act and search warrant of Greco's home, where authorities recovered a rifle the following day.

"He was shocked. He was upset. He had no clue that they were going to be coming to his house," said Rescinio, Greco's attorney. "It wasn't like he was holding a cache of weapons or he had automatic firearms. He had one legal rifle. That was it."

Bach, of Association of New Jersey Rifle & Pistol Clubs, said one of the flaws in the law is that if someone is posing an immediate threat of danger, a legal process can't intervene in the immediacy. He called the law a "gun owner harassment measure."

"In a true emergency you want to dial 911, not run into a courtroom and draft legal papers," Bach said.

The lawsuit raises a number of concerns with how the process unraveled, including how the Office of Homeland Security and Preparedness did not specify the officer who filled out the petition. The lawsuit claims there is no authority for a law enforcement agency — only an individual officer — to file a petition under the law.

The lawsuit also challenges if there is legal authority to execute a search warrant after a temporary extreme risk protection order is issued. After it is issued, the law says "the court shall issue a search warrant."

But the lawsuit alleges that because the order is contingent on "good cause" and not the legal standard of "probable cause," executing a search warrant is unconstitutional. More than a year after the law passed, Attorney General Gurbir Grewal, who is tasked with implementing and enforcing the law, wrote in a directive before the law went into

“They are trying to throw a band-aid on the fact that they know the law is unconstitutional,” Rescinio said of the directive. “That’s not how you do it. That’s not sufficient for me and you and our protections.”

But those who have challenged similar laws across the country have honed in on the due process rights of those named in a petition. The NRA challenged the law in numerous states, but has recently shifted their position on the laws, saying the organization supports extreme risk protection orders in general, but “with full due-process protections in place,” according to the National Review.

According to Giffords Law Center, no court has invalidated an extreme risk protection order law. Anderman, of the law center, said that is because it is a temporary deprivation that is only executed if it is determined that the person poses an imminent threat.

“The person has a right to get their guns back,” she said.

Greco has not gotten his rifle, ammunition or firearms purchaser ID card back yet. He received an extension after the temporary order was issued before he appears for a final order hearing that could determine if he should be given back what authorities took.

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